

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

CIVIL REVISION APPLICATION NO. 26 OF 2003

1. Shri Narcinva S.V. Sinai Velingkar
2. Shri Ramakant V.S. Velingkar
3. Shri Atchut V.S. Velingkar
4. Smt. Gomatibai Velingkar,
All residents of Aquem, Margao-Goa.
(since deceased represented by her legal heirs)
 - 4(a) Mr. Jayant Vencetexa Poi Bhale,
major of age, businessman and his wife.
 - 4(b) Mrs. Kishore Jaiant Poi Bhale,
both residents of E2 Adarsh Co-op. Society,
Caranzalem, Ilhas, Goa-403 002.
 - 4(c) Dr. Gurudas Poi Bhale alias Gurudas
Vencetesh Poi Bhale,
Medical Practitioner and his wife.
 - 4(d) Alka Gurudas Poi Bhale,
both residents at Shubham,
Faliero Bagh, Mungul Grande,
Margao, Goa-403 801.
 - 4(e) Dr. Satishchandra Venktexa Poi Bhale alias
Satischandra Vencetesh Poi Bhale,
Medical Practitioner and his wife
 - 4(f) Mrs. Sulaksha Satischandra Poi Bhale,
both residents at Amar Pali,
Atmaram Borkar Road,
Panaji, Goa – 403 001.

4(g) Miss Sandya Venctexa Poi Bhale,
daughter of the late Ventexa Poi Bhale,
housewife, unmarried,
resident of E2,
Adrash Co-operative Society,
Caranzalem, Goa – 403 002.

.... Petitioners/Decree-Holders

Versus

1. The Land Acquisition Officer,
Dy. Collector, Collectorate Office,
South-Goa, Margao.

2. Govt. of Goa,
Through Secretary Tourism,
Secretariat, Panaji-Goa.

3. The Director of Tourism,
Directorate of Tourism,
Govt. of Goa, Patto,
Panaji-Goa.

.... Respondents/Judgment Debtors

Shri M.S. Usgaonkar, Sr. Adv. with Shri I. Aga, Advocate for Petitioners.

Shri S.R. Rivonkar, Govt. Advocate for Respondents.

CORAM: **P.V. KAKADE, J.**

DATE: **11th August, 2006**

ORAL JUDGMENT

Heard learned Counsel for both the parties. Perused the
record.

2. The petitioner has challenged the order passed by District Judge, South Goa, Margao dated 24/03/2003 in Execution Application No. 14 of 1997 which came to be passed on the basis of remand order passed by this Court in order to determine the correct date of taking over possession of the property under provisions of Land Acquisition Act. The question for consideration of the learned District Judge was whether the acquired land in the said case was taken possession of by L.A.O./Government on 19/10/1979, as contended by the decree holders, or on 23/09/1981, as contended by the Judgment Debtors.

3. Earlier it was held by the District Court by order dated 31/07/1999 that possession of the acquired land was taken on 19/10/1979 but the possession of the structures was taken on 23/09/1981. Earlier order was subject matter of the revision application before this Court and by order dated 1/11/2002 the said earlier order was quashed by this Court and matter was remanded to decide date of possession afresh after permitting the parties to produce the documents in order to determine correct date of taking possession.

4. Accordingly, parties had produced additional documents

including correspondence. It is not in dispute that the property in question was acquired by the respondent for the purpose of Tourism Department. It was duly handed over to the said Tourism Department by State Government in furtherance of tourism in the State.

5. After hearing both the parties and perusing the entire records before me, including order passed by the learned District Judge, it is apparent from the record that the learned District Judge was of the view that by virtue of the letter dated 20/11/1979 the intention of Dy. Collector/L.A.O. Margao was reflected showing that he wanted to take symbolical possession of the acquired land, which was also not taken because no certificate signed by the Director of Tourism was returned to the Dy. Collector/L.A.O. In this connection, I have perused relevant record, which in my considered view, clarifies the possession.

6. Exhibit 'C' is the notice under Section 12(2) of the Land Acquisition Act, 1894 by the Dy. Collector, Margao to the interested persons in the said property. The notice was issued reflecting intention of the Dy. Collector that the possession of the impugned property mentioned therein would be taken on 19/10/1979 by the competent authority. Exhibit 'D', the

document dated 20/11/1979 is a letter written by the Dy. Collector to the Director of Information and Tourism, contents of which are bone of contention between the parties. It shows that possession certificate in triplicate is also sent alongwith the letter for necessary action. Now, it is not in dispute that the State Government acquired property for the purpose of use by the Director of information and Tourism. This letter at Exhibit 'D' manifestly shows that Dy. Collector has informed the Director that possession certificate was sent for signing. This aspect itself shows that property in possession with the Dy. Collector was to be handed over to the Tourism Department, and therefore Exhibit 'D' document came to be issued. Therefore by necessary implication it must be said that the possession of the property was either taken before 20/11/1979 or on the date indicated for taking possession in the notice issued under Section 12(2) itself i.e. 19/10/1979. What is brought on record is mainly the entire correspondence between State Government and Director of Tourism with which we are least concerned.

7. The position is further aggravated against the State Government because the record is conspicuously silent in respect of the said possession certificate which is deliberately or otherwise withheld and inspite

of giving opportunity to the respondent State, for producing such certificate, no such certificate was produced and hence an adverse inference is required to be drawn against State Government. Exhibit 'D' shows that the possession certificate in triplicate was sent to the Tourism Department which necessarily further implies that possession of the property was received earlier, otherwise there was no reason for the State Government to write to the Tourism Department to seek possession certificate countersigned by them.

8. In my considered view this is the only controversy which clarified itself from the record that possession of the property was indeed taken by the State Government on 19/10/1979 and not on 23/09/1981.

9. Learned Counsel for the respondent sought to put reliance on the ruling of the Supreme Court in the case of **P.K. Kalburqi Versus State of Karnataka and Ors.** (2005 12 SCC 489). Perusal of the ruling shows that it is not applicable to the present case. Apex Court has distinguished the mode of possession that is symbolic possession against physical possession but is of no help to the State in support of the contention which is basically detrimental to the factual aspect of the evidence, especially in

view of the omission to bring on record the important document either of possession panchanama or possession certificate mentioned in Exhibit 'D' document. It is also to be noted that if at all possession was taken, as sought to be canvassed on behalf of the State, in the year 1981, then atleast they should have produced the possession certificate or panchanama so as to show that the possession was taken in the year 1981 and not in the year 1979.

10. The fact remains that the order passed by the learned District Judge, South Goa appears to be incorrect and not based upon the factual aspect of the evidence on record, therefore has to be set aside. In the result Civil Revision Application is allowed in terms of prayer clause (a), (b) & (c). In view of the fact and circumstances there shall be no order as to costs.

P.V. KAKADE, J.

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